

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **June 11, 2002**

AGENDA ITEM NO.: **8**

CONSENT:

REGULAR: **X**

CLOSED SESSION:
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Rezoning Petition – Urban Alternative, Inc.**

RECOMMENDATION: Denial of petition for rezoning.

SUMMARY: Urban Alternative has petitioned to rezone approximately 0.9 acres at 1601 Wythe Road from I-3 Heavy Industrial District, to B-5, General Business District to allow the operation of a training center (vocational school) to serve welfare-to-work clients and the community with a variety of programs, including subsidized childcare, in an existing building. The Planning Division and Planning Commission (PC) recommend denial of the petition because:

- The petition does not agree with the *General Plan*, which recommends a General Industrial use.
- The petition proposes an inappropriate land use for the subject industrial parcel.
- The petition would result in rezoning to a classification that is less compatible with the surrounding area than the existing zoning classification.
- The “traditional” petition offers no protection for the City or the neighborhood from other inappropriate uses.
- The petition would remove viable property from the City’s industrial base in direct conflict with the City’s intent to preserve industrial property wherever possible.
- The City’s Director of Economic Development has objected to the proposed rezoning as being inappropriate for the site.
- The basic land use is inappropriate and proffers of a “conditional” petition would not address this issue.

The Planning Commission considered this matter on March 20 and recommended denial of the petition.

PRIOR ACTION(S):

February 13, 2002: Planning Commission postponed decision to allow proponents to clarify the uses to be located on the site.

March 20, 2002: Planning Division recommended denial of the petition.
Planning Commission recommended (5-2) denial of the petition.

FISCAL IMPACT: N/A

CONTACT(S):

Rachel Flynn/847-1508, Ext. 253
William McDonald/847-1508, Ext. 257
Judith Wiegand/847-1508, Ext. 236

ATTACHMENT(S):

- Ordinance
- PC Report and Minutes (March 20 and February 13, 2002)
- Vicinity Zoning Map
- Proposed Land Use
- Site plan
- Letter to Urban Alternative from Planning Division, dated February 20, 2002
- E-mail message from Planning Commission Chairman, dated February 16, 2002
- Narrative from Urban Alternative
- Letter of Concern
- Permitted Uses in B-5, General Industrial District, and B-3, Community Business District

REVIEWED BY:

ORDINANCE

AN ORDINANCE CHANGING A CERTAIN AREA FROM I-3, HEAVY INDUSTRIAL DISTRICT TO B-5, GENERAL BUSINESS DISTRICT.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG, in order to promote the public necessity, convenience, general welfare and good zoning practice that Chapter 35.1 of the Code of the City of Lynchburg, 1981, as amended, be and the same is hereby further amended by adding thereto Section 35.1-76.____, which section shall read as follows:

Section 35.1-76.____. Change of a certain area from I-3, Heavy Industrial District to B-5, General Business District.

The area embraced within the following boundaries . . .

Beginning at an iron pin set at the intersection of Wythe Road and Navel Reserve Road at the northern most corner of land known as Valuation Tax Map No. 028-07-039, thence S 39° 53' 00" E 200.00 feet to a drill hole in the sidewalk; thence S 54° 58' 00" W 199.87 feet to an iron pin set; thence N 39° 53' 00" W 200.00 feet to an iron pin set; thence N 54° 58' 00" E 199.87 feet to the point of beginning, being 0.914 acre is hereby changed from I-3, Heavy Industrial District to B-5, General Business District.

And the Director of Community Planning and Development shall forthwith cause the "Official Zoning Map of Lynchburg, Virginia," referred to in Section 35.1-4 of this Chapter to be amended in accordance therewith.

Adopted:

Certified:

Clerk of Council

076L

To: Planning Commission
From: Planning Division
Date: March 20, 2002
Re: **REZONING: I-3 to B-5 at 1601 WYTHE ROAD**

I. PETITIONER

Urban Alternative, Inc., P.O. Box 28, Lynchburg, VA 24505.
Representative: Petitioner

II. LOCATION

The subject property is a tract of about 0.9 acres located at 1601 Wythe Road.
Property Owner: Urban Alternative, Inc., P.O. Box 28, Lynchburg, Virginia 24505.

III. PURPOSE

The purpose of this petition is to rezone the subject property from I-3, Heavy Industrial District, to B-5, General Business District, in order to allow the operation of a training center to serve welfare-to-work clients and the community with a variety of programs, including subsidiary child care, in existing buildings.

IV. SUMMARY

- The petition does not agree with the *General Plan*, which recommends a General Industrial use.
- The petition proposes an inappropriate land use for the subject industrial parcel.
- The petition would result in rezoning to a classification that is less compatible with the surrounding area than the existing zoning classification.
- The "traditional" petition offers no protection for the City or the neighborhood from other inappropriate uses.
- The petition would remove viable property from the City's industrial base in direct conflict with the City's intent to preserve industrial property wherever possible.
- **The Planning Division recommends denial of the rezoning petition.**

V. FINDINGS OF FACT

1. **General Plan.** The Lynchburg *General Plan* recommends a General Industrial use for the subject property and adjacent properties on the same side of Wythe Road. The *General Plan* discourages scattering commercial activities throughout the City because scattering often inconveniences customers and increases the dangers of blighting effects on residential areas. Objective 4 of the *General Plan* recommends "[a] pattern of commercial uses and design of commercial areas which cause a minimum of nuisance to living areas and of interference with traffic on major thoroughfares." The subject petition proposes to add a commercial zoning classification in a block with heavy industrial zoning and land use. The proposal will not maintain the current practice of preserving existing industrial areas as established by the *General Plan*.
2. **Zoning.** The subject property was annexed into the City in 1926 and has been zoned industrial continuously since 1930. In 1939, the property was used as the Naval Armory and, more recently, as a Federal Courthouse. The existing buildings were constructed in an industrial district under the then prevailing provisions of the Zoning Ordinance. The site proposed for the training center is presently zoned I-3, Heavy Industrial District, and adjacent parcels are also zoned I-3. Property directly across Wythe Road is also zoned I-3 and contains a mixture of residences and industries. The nearest commercially zoned

property is the block bounded by Stadium Road, Blackburn Street, Fulks Street, and James Street. This property is zoned B-5, but has had residences on it for years.

The project proponents have petitioned to rezone the subject property to B-5, General Business District. According to the narrative that accompanied their application (see attached narrative), the proponents intend to operate a training center to offer computer based training, a developmental job skills program, community and parent awareness programs, and other programs, with a subsidiary childcare facility. However, their application contains no condition or “proffer” that would restrict activities to those uses. So, should the proponents cease to operate the training center, they or a subsequent owner could then engage in any of the uses permitted in a B-5 district. Many of these potential uses are very commercial in nature — they could involve significant numbers of customers or clients and considerable traffic — so these uses are even more incompatible with the surrounding industrial and residential zones than the training center. This “traditional” petition does not include any protection for the City or the neighborhood from other inappropriate uses. The petition is for an unconditional rezoning that would permit by right any use now included as a permitted use in a B-5, General Business District, or B-3 Community Business District. A list of these uses is enclosed with this report.

Further, there is a discrepancy between the site plan provided with the project proponents’ first application and the narrative included with their second application, which is the subject of this report. The site plan indicates that the first floor of the main building will be used for the day care center and a computer lab. The site plan indicates that the second floor will be devoted to office space. There is no indication of where classrooms or meeting space will be located. During a meeting with representatives of Urban Alternative, Inc. on February 20, 2002, we specifically requested information about the location of these uses. It was not included in the revised application for rezoning.

One of the Planning Division’s major concerns with all rezoning petitions is the long-term impact on neighborhoods and the City as a whole. Following completion of the City’s new *Comprehensive Plan*, the Planning Division expects to rewrite the City’s Zoning Ordinance and revise the Zoning Map. During that effort, any areas where a zoning classification is incompatible with adjacent classifications or with the land use will be reviewed and addressed. Inserting a commercially zoned property into the present mix of industrially and residentially zoned properties in this area will simply make that review and revision more complicated and difficult.

3. **Economic Development.** Ed Miller, Director of Economic Development, objects to the proposed rezoning because:
- From an economic development perspective, the zoning should not be changed to allow the operation of any commercial use, including a training center, in close proximity to industries on adjacent parcels.
 - The training center would not be compatible with the industrial businesses in the immediate area.
 - Industrial property should not be downzoned because the City would then lose the opportunity to help industries expand or relocate to the site.

Both the Office of Economic Development and the Planning Division staffs have offered to assist the project proponents in finding an alternate location that would be more suitable for a training center and not represent a threat to surrounding industrial operations.

4. **Board of Zoning Appeals (BZA).** On November 27, 2001, the Board of Zoning Appeals considered two variances for the proposed development. The Board approved the variance to allow the use of buildings having a setback of 20 feet from Naval Reserve Street instead of the required 40 feet. The Board denied the requested variance to not provide the required number of off-street parking spaces.
5. **Surrounding Area.** A B-5(Conditional) petition was submitted by the petitioners and considered by the Planning Commission on February 13, at which time the matter was postponed until a later date. That petition was revised into the subject petition. Other than the previous petition, there have been no recent rezoning petitions or CUP petitions in the vicinity of the subject property.

6. **Site Description.** The site is approximately 0.9 acres on which are located three industrial structures (one of which was formerly a Federal Courthouse) and four paved parking spaces. The site is abutted on two sides by heavy industrial land use (Banker Steel), across Naval Reserve Street by public use (the City Stadium), and across Wythe Road by a mixture of residential and industrial uses.
7. **Proposed Use of Property.** The purpose of the rezoning is to allow the operation of a training center with subsidiary childcare for a maximum of between 20 and 35 children in one of the existing buildings. The building proposed for the training center and childcare facility is a two-story brick structure, with approximately 2,700 square feet on each of the two floors. There are two metal structures at the rear of the brick structure. The center building is proposed to be used for “personal storage” and the rear building as inside parking with ten angled parking spaces.

The type of facility proposed for 1601 Wythe Road, a training center with subsidiary childcare, is needed by and would be of great benefit to the City of Lynchburg. The Planning Division’s recommendation to deny the petition for rezoning is based on the proposed location, not the type of facility.

Mr. Donald W. Banker, the President/CEO of Banker Steel, the adjacent industry, submitted a letter of concern regarding the proposed use of the subject property to Mr. Arthur Tolley for consideration at the public hearing by the Board of Zoning Appeals. The letter is also directly applicable to consideration of the rezoning petition. A copy of the letter is enclosed with this report.

8. **Traffic & Parking.** The City Traffic Engineer noted that the existing entrance to the site was sub-standard in width for two-way traffic. The site plan indicates the entrance from Wythe Road will be widened to 30 feet.

The site plan indicates the following parking requirements and provisions for the proposed uses:

	<u>Required Spaces</u>	<u>Provided Spaces</u>
Building #1: Child Care/Office/Computer Lab		- 16
Building #2: Storage	- 2	
Building #3: Parking	- + (-)	
10 spaces in Bldg. #3, 8 on site	18	Total 18

The Traffic Engineer also noted that on-street parking may need to be partially restricted to allow adequate line-of-sight for safe ingress and egress.

Because of the discrepancy between the uses noted on the site plan and those described in the narrative submitted with the application for rezoning, the Planning Division staff remains uncertain whether the parking requirements listed above are those that need to be met. Parking requirements for classrooms are different than those for office space.

9. **Storm Water Management.** The Environmental Specialist of the Robert E. Lee Soil & Water Conservation District notes that a storm water management plan will be required only if the disturbed area exceeds 1,000 square feet. The petition does not propose any new disturbed areas.
10. **Impact.** The project proponents propose to use existing industrial structures for the training center, childcare, personal storage, and parking. Other than the demolition of a small cinder block (garage) structure at the rear of the property, there is no proposed exterior modification of the structures. The Planning Division has serious concerns about the impacts the existing heavy industrial area will have on the proposed training center and childcare facility. The existing industries, noise, and traffic in the area make a training center and childcare facility a poor choice of land use for the subject property. The Planning Division is concerned that the proposed use calls into question the health and safety of adults using the center and children being kept at the facility. The area designated for an outdoor recreation area is located beside the existing metal structures. The intensive land uses in the area make the proposed childcare facility inappropriate with regard to providing a safe and effective drop-off/pick-up area for children, as well as the actual operation of such a facility in an industrial area. The proposed rezoning is not compatible with the surrounding land uses or zoning.

11. **Technical Review Committee.** The Technical Review Committee (TRC) reviewed the preliminary site plan on October 9 and noted the need for revisions, some of which were major in nature and will need to be addressed by the petitioner. The following were comments of significance to the rezoning petition:

- A. The proposed use as a childcare facility is not an appropriate land use for this area. The petitioner is strongly encouraged to investigate alternative sites for such a use involving small children.
- B. The Planning Division concludes that this petition is an example of “spot zoning” (which is prohibited by State Enabling Legislation) and as such a petition can not be supported.
- C. The rear metal building has previous fire damage and this particular building shall not be used for any purpose until renovation is completed and approval obtained from the Inspections Division. It is also noted the corner of the existing building is less than two feet from the property line and the exterior wall is not fire rated. This non-complying condition may need to be addressed by construction plans, if any change of use is to occur, or the back building could be removed.
- D. There will be competition for on-street parking on Wythe Road and there may not always be a space available for day care visitors and employees, as well as any community activities, meetings, etc. Therefore, sufficient on-site parking spaces, as prescribed by the City’s Planning and Zoning staff should be provided.

VI. PLANNING DIVISION RECOMMENDATION

Based on the preceding Findings of Fact, the Planning Division recommends to the City Council denial of the petition of Urban Alternative, Inc. to rezone about 0.9 acres at 1601 Wythe Road from an I-3, Heavy Industrial District, to a B-5, General Business District, to allow the operation of a training center, including subsidiary child care, in existing buildings.

This matter is respectfully offered for your consideration.

William K. McDonald, AICP
Acting City Planner

pc: Mr. L. Kimball Payne, III, City Manager
Mr. Walter C. Erwin, City Attorney
Ms. Rachel O. Flynn, Director of Community Planning & Development
Mr. Bruce A. McNabb, Director of Public Works
Mr. John W. Jennings, Fire Marshal
Ms. Judith C. Wiegand, Strategic Planner
Mr. J. Lee Newland, Director of Engineering
Mr. Gerry L. Harter, Traffic Engineer
Mr. Karl Cooler, Building Official
Mr. Robert Drane, Senior Property Maintenance Code Enforcement Officer
Mr. Arthur L. Tolley, Zoning Official
Mr. Robert S. Fowler, Zoning Official
Mr. and Mrs. Ron Stringfield, Petitioners/Representatives

VII. ATTACHMENTS

1. Vicinity Zoning Pattern

(see attached map)

2. Vicinity Proposed Land Use

(see attached map)

3. Site Plan

(see attached site plan)

4. Narrative submitted by petitioner with their rezoning petition

(see attached narrative)

5. Letter of Concern

(see attached letter)

6. Letter to Urban Alternative, Inc.

(see attached copy of letter requesting second application and additional information)

7. Permitted Uses in B-5, General Industrial District, and B-3, Community Business District

(see attached excerpts from the City's Zoning Ordinance)

Sec. 35.1-38. General business district (B-5).

(a) Intent. This district is to provide for a variety of commercial and similar uses which require large sites and which often produce substantial nuisance effects. The location of these districts should provide for a high level of access, relatively large amounts of level land, and opportunities to shield adjacent residential districts from nuisance effects.

(d) Uses permitted by right. The following uses shall be permitted by right in the general business district subject to the regulation of Section 35.1-14 to the zoning ordinance:

(1) Uses permitted by right in the B-3 district except one (1) and two (2) family dwellings.

(2) The following additional uses:

Auction rooms

Armories

Automobile and truck rental

Automobile, truck and trailer sales with outside sales and storage permitted

Automobile service stations

Automobile and truck tire sales

Rebuilding and retreading establishments

Battery sales

Bottling plants

Billboards, subject to the regulations of Section 35.1- 26.1

Blacksmith shops

Bookbinding

Building material sales

Carpentry shops

Coffee and peanut roasting

Commercial amusements, including swimming pools, golf courses and driving ranges, and skating rinks, but not including circuses, carnivals, and race tracks

Contractors' establishments

Dairies, pasteurizing plants, or ice cream manufacture

Dance halls

Depositories for the storage of office records, microfilm or computer tapes

Diaper services

Drive-in theaters

Dry cleaning and dyeing plants

Exterminators

Furniture upholstering and repair shops

Custom furniture manufacturing

Commercial greenhouses

Hiring halls and other places of assembly for the registration or assignment of employment

Automobile painting and body repair shops

Laundries

Sales lots for construction and farm equipment and similar machinery

Ice manufacture

Commercial kennels for dogs and other pets

Wholesale or produce markets

Monument and gravestone sales

Motion- picture production studios

Newspaper offices

Photographic developing and printing establishments

Printing plants

Second-hand stores including auction sales provided such activity is conducted wholly within an enclosed building

Small sign shops

Storage warehouses and yards, except sand yards, gravel yards, coal yards, railroad yards, automobile wrecking yards, junkyards or the storage of combustibles prohibited by the fire code

Travel trailer sales and rentals

Window blinds, shades and awnings (manufacture)

Leather products (not to include tanning)

Other uses determined by the city council to be of similar character to and compatible with the above uses.

(e) Permitted accessory uses. The following uses are permitted as accessory to principal uses permitted in general business districts:

(1) Accessory uses permitted in B-3 districts.

(2) Other uses determined by the planning commission to be customarily accessory to uses permitted in this district.

Sec. 35.1- 36. Community business districts (B-3).

(c) Uses permitted by right. The following uses will be permitted by right in community business districts under the regulations of Section 35.1-14 of the zoning ordinance:

(1) Uses permitted by right or by conditional use permit in the R-1 through B-2 districts, except a PUD, a CCD, a TND, or uses specifically listed as requiring a conditional use permit in the B-3 district.

(2) Establishments selling the following types of merchandise at retail:

House hold appliances

Artworks

Art supplies

Bakery goods

Bicycles

Business machines

Carpets and rugs

Clothing and accessories

Dry goods

Furniture

Garden and farm supplies

Greenhouses, nurseries and garden supply establishments

Jewelry

Luggage

Musical equipment and supplies

Orthopedic appliances

Optical goods

Paint

Pets

Radios, television sets and phonographs

Phonograph records

Photographic equipment

Sporting goods, toys and games

Supermarkets or food stores exceeding eight thousand (8,000) square feet in total floor area

Virginia A.B.C. package stores

Hotels and motels

(3) Services listed below:

Auditoriums, limited to a maximum capacity of one thousand (1,000) persons

Automobile driving schools

Banquet halls

Bicycle rentals

Blueprinting, duplicating and printing shops limited to a maximum of five thousand (5,000) square feet of floor space

Business services not involving large mechanical devices

Schools and colleges of all types (including vocational schools) that do not exceed a maximum enrollment of one hundred (100) students

Public and commercial parking lots and parking garages for automobiles only

Dance studios

Funeral undertakers

Interior decorating establishments
Medical and dental laboratories
Loan offices
Locksmith shops
Opticians and optometrists
Pawn shops
Photographic studios
Stage and motion-picture theaters
Travel bureaus
Gymnasiums and health salons

(4) Banks, savings and loan, and similar establishments.

(5) Wholesale sales establishments with storage limited to a maximum area of one thousand (1,000) square feet.

(6) Radio and television studios and stations, without towers, provided that studios produce no exterior electromagnetic effect and are soundproofed from adjoining properties.

(7) Restaurants, including drive-in and outdoor restaurants.

(8) Other uses determined by the city council to be similar to and compatible with the above uses.

(d) Permitted accessory uses. The following shall be permitted as accessories to permitted principal uses in community business districts:

(1) Accessory uses permitted in the B-1 and B-2 districts (except those uses customarily permitted only as accessories to residential uses) shall be permitted in B-3 districts only as accessories to residential uses permitted and regulated herein as conditional use permit.

(2) Dance floors, accessory to restaurants.

(3) Other uses determined by the city council to be customary as accessories to uses permitted in this district.

MINUTES FROM THE MARCH 20 PLANNING COMMISSION MEETING

Petition of Urban Alternative, Inc. to rezone approximately 0.9 acres at 1601 Wythe Road from I-3, Heavy Industrial District, to B-5, General Business District, to allow the operation of a training center (vocational school) to serve welfare-to-work clients and the community with a variety of programs, including subsidiary child care, in an existing building (postponed from February 13 and March 13).

Mr. McDonald said Urban Alternative had appeared before the Planning Commission in February 2002 and at that meeting the Commission asked that the group resubmit a petition clarifying their request, which they had done.

Mr. Ron Stringfield, 101 Warfield Road, Lynchburg, president of Urban Alternative, Inc. addressed the Planning Commission. Mr. Stringfield thanked the Commissioners for letting them revamp their plan for the subject property; however, he added, Urban Alternative felt that the meeting they had with the Planning Division staff after the February Planning Commission meeting was very negative and obviously the staff was still against the rezoning of this property. Mr. Stringfield said they wanted to use this site as a training facility for low-income welfare recipients. He said there would be seven students at one given time and a maximum of 20 children in their child-care facility. He said that number of children was determined by the State Department of Social Services according to the size and type of space dedicated to the child-care center. He said the hours of operation would be from 7:00 a.m. to 5:00 p.m., Monday through Friday. Mr. Stringfield reminded the Commission that the building adjoined the City Stadium, was directly across the street from a residential neighborhood, and had been vacant for over 17 years. He explained that they had gone to great extent to be sure the property was reliable and safe for the intended use. He added that they had approval from Social Services, Building Inspections, the Health Department and other professional and technical personnel. He said they had agreed to everything the Planning Division had required to make sure the building was safe and usable, and added that they were willing to do whatever they needed in order to utilize this property. Mr. Stringfield noted that they had met with the surrounding business and neighbors and they were all are in favor of the rezoning.

Ms. Sylvia Hobson, 1126 Ardmore Drive, Urban Alternative, Inc. spoke to the Commission. Ms. Hobson said in addition to what Mr. Stringfield had explained, the state licensing agent had been to the property and found it to be an adequate site for childcare and said everything appeared to be in order. She continued to explain that both the Fire Marshal and the City Building Inspector had also visited the site, but all of their approvals were pending on the recommendation of the Planning Commission and City Council. She said Urban Alternative could not move forward with their program until they received their endorsement.

Mr. Timothy Hurd, 1929 Grace Street, Lynchburg, vice president of Urban Alternative addressed the Commission. Mr. Hurd said he wanted to stress that the Planning Division's concerns with parking issues had been addressed and should not be a problem any longer. He added that on their visit to the site, Ms. Rachel Flynn, Director of Community Planning and Development, and Mr. Art Tolley, Zoning Official, said that Urban Alternative's proposed parking plan would be satisfactory to the City. Mr. Hurd said they had widened the entrance to the site, and there would not be much on street parking by their students or employees.

Larry Stone, representing Don Banker, owner of Banker Steel, spoke in opposition to the petition. Mr. Stone explained that he was the project manager for Banker Steel and was also in charge of their east coast operations. Mr. Stone said they were opposed to the petition due to safety and the inappropriate location for this facility. He explained that the nature of their business, which was a fabricator of bridge girders and structural steel, forced them to have their business near a railroad and have easy access to at least one major highway. He added that they often ship pieces of steel that weigh several tons and were many feet long, and they had to have police escorts just to get out of the City. Mr. Stone said parking was often a problem for the entire area and Banker Steel had an agreement with the City which allowed them to use the parking lot at the City Stadium if necessary. He said in the past, the previous owner had offered to sell the land to his company, but the only use they would have for it would be to make it a parking lot.

Mr. Ed Miller, Economic Development Director for the City, spoke in opposition to the petition. Mr. Miller said that even though Urban Alternative was proposing a great program, the site was zoned industrial and was not suitable for their program. He said he had talked with representatives from Banker Steel about their expansion possibilities, and after touring their manufacturing facilities he was concerned about safety to children attending the proposed child-care facility. He noted that he had visited the site on more than one occasion and found that street parking was very limited. He said on one of those visits, vehicles were double parked on the street. Mr. Miller expressed his concern that if this petition was approved, the City might jeopardize its tax base and the possibility of additional jobs for citizens. He concluded by saying that at the last meeting he had given a business card to Mr. Stringfield and offered his help to them. He added that he was still willing to assist them if they choose to accept his help.

Ms. Judy Wiegand, Strategic Planner for the City, told the Commission that she wanted to stress that this petition is for unconditional rezoning. She said if the Planning Commission and the Council both recommended approval for this petition, and if ever in the future Urban Alternative sold the building, this site, by right of B-5 zoning, could become numerous undesirable businesses. She also explained that she was concerned about the long-term issues of the Conditional rezoning. She said after the Comprehensive Plan is complete, her goal was to revise the City Zoning Ordinance and Zoning maps. Ms. Wiegand stressed that Urban Alternative has a very good program to offer, but it does not fit in this location. She said the staff could work with them to help them find a more suitable location.

Mr. Stringfield gave a rebuttal. He said Urban Alternative had off-street parking, so that would not be an issue for them. He said Banker Steel's manufacturing process was contained inside, and all of Urban Alternative's activities were also contained in a building, and he did not know how safety could be an issue. He added that there was a ten-foot barbed wire fence around the playground, which would eliminate children wondering from the area when they were outside. Mr. Stringfield said that Mr. Miller's comments indicated that he was more concerned about the revenue Banker Steel could bring into the City instead of the social needs of the people of Lynchburg.

Commissioner Pulliam asked about the maximum number of children allowed at the day care center. He asked if Urban Alternative would be utilizing all three buildings. Commissioner Pulliam asked Mr. Stringfield if he would be receptive if the City worked to find a better, more suitable location for Urban Alternative?

Mr. Stringfield said the maximum children allowed at the center would be 20, which was determined by the state licensing board. He added that they would only be using the first building on the site and continued that he would not be receptive to the City's offer to find them another site. He said he had no confidence in the Planning Department and they had alluded that they were not in the real estate business. He noted that they already owned the property and should be able to utilize it.

Commissioner Echols asked where the group's financing came from and if they were a local organization or a national organization. He added that the concept of the program was wonderful, but this was the wrong location and there were many more sites suitable for Urban Alternative.

Mr. Stringfield said they were a non-profit organization. He said the bulk of their funding came from social services and they could also apply for grants. He said this organization had no ties to larger, national organizations.

Commissioner Wilkins asked Mr. Stringfield if he thought they would ever have as many as twenty children in their child care facility. She said if they do not think they will ever have twenty children, they could put a lower maximum number on their petition.

Mr. Stringfield said they did not think they would ever have 20 children.

Ms. Hobson said the focus of the program was for the training of parents, and childcare provided a means for those parents to be able to come for training. She said they could not guarantee that on a given day they may have twenty children. She added that the number of children depended on the people coming for training. Ms.

Hobson said they just wanted to be able to accommodate the trainees and not focus on building up a child care facility.

Chair Dahlgren asked Mr. Stringfield why they had not applied for B-5(Conditional). He said it would have been easier for the Commissioners to approve if there were restrictions placed on the property.

Mr. Stringfield said he asked that question at the beginning of the process and the Planning staff said that under the current zoning they could not get a Conditional Use Permit to accomplish their goal. He said they were not told that they could apply for conditional rezoning.

Mr. McDonald reminded the Commission that the first petition Urban Alternative filed was for conditional rezoning, but when they filed their revised petition, they had changed their request to a straight rezoning and had dropped the previous condition.

Mr. Hurd added that the Planning Division staff did not think Urban Alternative should move into the building on Wythe Road, so the Urban Alternative staff felt that they were not getting any help from the City. He said when they resubmitted their revised petition, they did not know they had to include the condition again. He asked why they were not told that the condition had to be included on the revised petition.

Mr. McDonald and Ms. Wiegand both said that at the meeting they had with Mr. Stringfield, Mr. Hurd, and Ms. Hobson they had been given two copies of the application for Conditional rezoning with directions. They said they did not know why Urban Alternative did not use the forms that they were given. They said they had done everything possible to be fair and give the petitioners the right answers.

Mr. Stringfield said what they needed was options. He said they were under the impression that the condition, which was that they would use the second building for personal storage, was still on the site plan.

Commissioner Wilkins said this was not a taking of the property if it had not been used for 17 years. She said it was time that the City acknowledged that this property was not going to be used industrially. She said Banker Steel said they needed more room, but they are not interested in buying the property. She added that it would be wrong to deny this petition.

Commissioner Moore agreed with Commissioner Wilkins. He said there was nothing in the Planning staff's report that would influence him to deny the petition. He said this building had not been used in 17 years and now we have an organization that wants to occupy the vacant building and provide a service to the community. He said the Commission needed to ignore the zoning of I-3. He said those are just a letter and a number and what they needed to look for was the best fit for the site. Commissioner Moore said this was a great use for the site and he applauded Urban Alternative for being persistent.

Chair Dahlgren said he wished the petitioners much luck and admired them for their efforts and for what they wanted to do for the community; however, he said, he had to think about the future and what might happen if Urban Alternative moved out of that building. He added that there were hundreds of types of businesses allowed in the B-5 zone, and noted that many of them would not be suitable for the site on Wythe Road.

Commissioner Flint commented that it was not the City staff's responsibility to write a proposal for a petitioner or try to develop acceptable proffers for them. He pointed out that all of the petitioners that had been before them at this meeting had someone represent them, such as a real estate agent, an attorney, etc., who knew the procedures and how to write an acceptable proposal and develop proffers. He noted his unwillingness to approve an unconditional rezoning.

Commissioner Moore said that he had very few objections to any of the businesses that were allowed by right in a B-5 zoning. He asked the petitioner if he was willing to add a condition to his petition that stated that if they ever sold the property, the site would only be used for a facility such as theirs.

Mr. Stringfield said he would be willing to attach a condition such as Commissioner Moore was talking about.

Chair Dahlgren said they could work with Mr. Stringfield on adding a condition to his petition, but felt uncomfortable with the direction this petition was moving in. He suggested that the petitioners find someone to advise them in this matter. He added that even if the petition had been B-5(Conditional) and not just B-5, he would still not support locating this Training Center/Child Care facility at this site on Wythe Road.

that under the circumstances he would have to vote to deny their request.

Commissioner Moore reminded the Commission that at the last meeting he indicated that he wanted to see what could be done to make the proposal acceptable. He said if the petitioner wanted a Conditional Rezoning, but his petition does not have the correct wording, what could they do to correct it.

Mr. McDonald said the petitioner could proceed to City Council with a recommendation that was different than what the Commission was considering today. He said the Council may grant approval since the petition would then be more restrictive.

Chair Dahlgren explained to Mr. Stringfield the procedures on going to Council and said Council had the final decision. He said postponing the vote was not a solution. He said there was the potential that this property could be used for an industrial area as it currently is zoned.

After further discussion, Commissioner Echols made the following motion, which was seconded by Commissioner Pulliam and passed by the following vote:

That the Planning Commission recommends to the City Council denial of the petition of Urban Alternative, Inc. to rezone about 0.9 acres at 1601 Wythe Road from an I-3, Heavy Industrial District, to a B-5, General Business District, to allow the operation of a training center, including subsidiary child care, in existing buildings.

AYES: Dahlgren, Echols, Flint, Pulliam Worthington	5
NOES: Moore, Wilkins	2
ABSTENTIONS:	0

February 20, 2002

Mr. Ron Stringfield
Mr. Tim Hurd
Ms. Sylvia Hobson
Urban Alternative, Inc.
P.O. Box 28
Lynchburg, VA 24505

Dear Mr. Stringfield, Mr. Hurd, and Ms. Hobson:

This letter is a followup to our meeting this morning. There are three matters I would like to cover: 1) a second application for a conditional rezoning, 2) the question of renovations to the buildings at 1601 Wythe Road, and 3) uses which may legally occur in the buildings prior to a possible rezoning.

First, as we discussed this morning, the most effective way for Urban Alternative, Inc. to clarify which uses you are proposing for the "Transformation Center" is for you to complete and submit a second application for a conditional rezoning. There will be no fee for this second application. The City staff's objective in requesting this reapplication is to make sure that the staff, the Planning Commission, and, ultimately, the City Council all review the same information. Further, it is in Urban Alternative's best interests for each party to have the information in time to review it prior to the meeting at which they will hear your petition.

In order for your rezoning petition to be heard by the Planning Commission at its meeting on March 13, 2002 (and the City Council meeting on April 9, 2002), we need to receive your completed application in the Planning and Community Development Department **no later than 5:00 p.m. on Wednesday, February 27, 2002**. This is the standard deadline for consideration at a Planning Commission meeting. If you would like for staff to review a draft application before you submit it, please bring it in or fax it to us before this deadline.

We strongly recommend that you include in the application itself all uses you expect to have in any of the three buildings in the foreseeable future. In order to prepare an accurate report for the Planning Commission, we need to know which part of the buildings will be used for which use and how many people would be served by each. For example, based on your verbal description, the application should state that the rear building will be used for parking and the middle one for personal storage. If the number of clients to be served is uncertain, please indicate a possible range and the reason for the uncertainty.

Also, if any of the support letters you include with your application mention uses that you are not contemplating, please say so in your application, or request revised letters of support.

Second, it is our understanding based on your statements at the meeting this morning, that you have not made any renovations to the buildings at 1601 Wythe Road; all the renovations shown in photos included in your booklet provided to the Planning Commission at its February 13 meeting were made prior to the date Urban Alternative, Inc. took possession of the buildings.

Third, we discussed this morning the uses that are legal in the buildings prior to a successful rezoning. I am attaching copies of the relevant sections of the City's Zoning Ordinance listing permitted uses in the I-2 and I-3 districts.

Thank you for taking the time to come in and meet with us this morning.

If you have any questions or would like any additional information, please call us:

Judy Wiegand: 847-1508 x.236

Bill McDonald: 847-1508 x.257

Art Tolley: 847-1572 x.251

Bob Drane: 847-1572, x.247
The Fax number for all of us is: 845-7630.

Sincerely,

Judith C. Wiegand
Strategic Planner
judith.wiegand@lynchburgva.gov

Attachment: Permitted uses in I-2 and I-3 districts

cc: Members of the Planning Commission
Kim Payne, City Manager
Rachel Flynn, Planning Director
Walter Erwin, City Attorney
William McDonald, Acting City Planner
Art Tolley, Zoning Official
Bob Drane, Property Maintenance Code Official
Betsy Webb-Shlager, Administrative Associate

Sec. 35.1-40. Light industrial districts (I-2).

(a) Intent. This district is intended to provide for industrial uses of a variety of types which produce relatively low levels of smoke, smell, noise, light, dust and other nuisances. These areas would contain many of the same types of activity as the restricted industrial districts, but lower development standards would be permitted. In general, operations are appropriate in this district which: (1) do not involve nuisances discernible at the lot line; and (2) do not deal with large volumes of customers on a continuous basis throughout the day. No use shall be allowed in this district unless listed below as a use permitted by right, as a permitted accessory use or as a use permitted by conditional use permit, provided, however, that any such permitted use existing prior to December 13, 1988, may be enlarged or expanded, but not relocated, so long as it meets all other applicable requirements of this chapter. Any such use shall not be subject to any of the limitations or other regulations prescribed for non-conforming uses elsewhere provided in this chapter.

(b) Uses permitted by right. The following uses shall be permitted in light industrial districts subject to the regulations of Section 35.1-14.

(1) Uses permitted by right in restricted industrial districts (I-1) (except for an office building which is not directly related to an industrial activity).

(2) Adhesive products (manufacturing).

(3) Armories.

(4) Artisans and craft work.

(5) Automobile and truck parts manufacturing.

(6) Automobile parking garage, repair shop or parking lot subject to approval by the city council as provided by other ordinances of the city.

(7) Bakery goods (manufacturing).

(8) Battery (manufacturing).

(9) Blue printing and photostating establishments.

(10) Billboards subject to the regulations of Section 35.1- 26.1.

(11) Bottling and beverage works.

(12) Book binding.

(13) Box (manufacturing).

(14) Broom and brush (manufacturing).

(15) Bus and other transit stations.

(16) Cameras and other photographic equipment (manufacturing).

(17) Candy (manufacturing).

(18) Carpentry and cabinet making shops.

(19) Catering establishments.

(20) Ceramic products (manufacturing).

(21) Chemical apparatus (manufacturing).

(22) Coffee and peanut roasting.

(23) Commercial greenhouses.

(24) Communications systems service (manufacturing and wholesale).

(25) Computer centers.

(26) Confection (manufacturing).

(27) Cosmetics (manufacturing).

(28) Data processing service.

(29) Dairies and/or pasteurizing plants.

(30) Depositories for the storage of office records, microfilm or computer tapes.

(31) Die casting.

(32) Distribution center.

(33) Drugs (manufacturing).

(34) Drycleaning establishments.

(35) Dyeing establishments.

(36) Electrical appliances (manufacturing and fabrication).

(37) Electrical equipment (manufacturing and fabrication).

(38) Electronic components and instruments (manufacturing and fabrication).

(39) Electroplating.

(40) Extracts, food and flavor (manufacturing).

- (41) Fence (manufacturing).
- (42) Food wholesale.
- (43) Food products (manufacturing) other than fish, sauerkraut, vinegar, or yeast, or the refining or rendering of fats or oils.
- (44) Furniture and fixtures (manufacturing).
- (45) Glass products (manufacturing).
- (46) Government buildings used exclusively by the city, county, state or federal government for public service.
- (47) Hardware and tools (manufacturing).
- (48) Ice, natural and dry manufacturing.
- (49) Ice cream (manufacturing).
- (50) Ink products (manufacturing).
- (51) Instruments, professional, scientific and controlling (manufacturing).
- (52) Insulating material (manufacturing).
- (53) Jewelry (manufacturing).
- (54) Laboratories (re search and testing).
- (55) Laboratory apparatus (manufacturing).
- (56) Latex (fabrication, not including paint).
- (57) Laundry plants.
- (58) Leather products (manufacturing, not to include tanning).
- (59) Linen supply establishments.
- (60) Lithographing.
- (61) Luggage (manufacturing, not to include tanning).
- (62) Machinery and machines, household and office (manufacturing).
- (63) Machine shops.
- (64) Machine tools, light (manufacturing).
- (65) Medical equipment (manufacturing).
- (66) Metal finishing.
- (67) Metal products and machinery, medium and light (manufacturing and fabrication).
- (68) Milk and dairy products (processing and distribution).
- (69) Modular and mobile homes (manufacturing).
- (70) Monument works and statuary (production).
- (71) Motorcycles (manufacturing and fabrication).
- (72) Musical instruments (manufacturing).
- (73) Motor freight terminals.
- (74) Moving and storage establishments.
- (75) Novelty products (manufacturing).
- (76) Off-street parking garages and lots incidental to industrial activities.
- (77) Office, general, directly related to industrial activities.
- (78) Optical equipment (manufacturing).
- (79) Orthopedic and medical appliances (manufacturing).
- (80) Packaging and paper products manufacturing from previously prepared materials.
- (81) Perfumes (manufacturing).
- (82) Pharmaceuticals (manufacturing).
- (83) Plastics (fabrication).
- (84) Photoengraving.
- (85) Photography film (manufacturing and processing).
- (86) Polish (manufacturing).
- (87) Porcelain enamel products (manufacturing and fabrication).
- (88) Pottery and chinaware (manufacturing).
- (89) Printing and publishing.
- (90) Radio and television studios and stations, provided that studios produce no exterior electromagnetic effect and are soundproofed from adjoining properties.
- (91) Retail/wholesale display rooms for sales at industrial establishments of products manufactured onsite and other products of the corporation provided the display area does not exceed fifteen (15) per cent of the total floor area.
- (92) Rope, fibrous (manufacturing).

- (93) Rubber fabrication.
- (94) Rugs (manufacturing).
- (95) Shoe manufacturing.
- (96) Signs (manufacturing).
- (97) Silverware, plate and sterling (manufacturing and fabrication).
- (98) Spices (manufacturing and processing).
- (99) Sporting and athletic goods (manufacturing).
- (100) Starch (manufacturing).
- (101) Static transformer stations, transmission lines, gas and water mains, conduits for the transmission of electric energy including telephone, telegraph, and noncommercial radio and television poles and appurtenances thereto.
- (102) Telephone exchanges.
- (103) Textile mills products (manufacturing and fabrication).
- (104) Tobacco products (manufacturing).
- (105) Toiletries (manufacturing).
- (106) Tool, die or pat tern making shops.
- (107) Toys and games (manufacturing).
- (108) Trade expositions.
- (109) Twine, tibrous (manufacturing).
- (110) Union halls.
- (111) Warehousing and storage, except sandyards, gravel yards, coal yards, railroad yards, automobile wrecking yards, junk yards, or the storage of combustibles prohibited by the fire code.
- (112) Wax and wax products (manufacturing).
- (113) Wearing apparel (manufacturing).
- (114) Welding and blacksmith shops.
- (115) Wholesale establishments with a building area of five thousand (5,000) square feet or more. A portion of the establishment may be used for retail display area, provided the retail sales (a) do not exceed fifteen (15) per cent of the total building area, and (b) are not used for secondhand (consignment) merchandise or auction centers and do not require outdoor storage such as lumber yards, wholesale warehouses for the sale of motor vehicles, farm, or heavy construction equipment.
- (116) Window blinds, shades and awnings (manufacturing).
- (117) Wire (manufacturing).
- (118) Wood products (manufacturing).
- (119) Wool processing.
- (120) Other uses determined by the city council to be of similar character to and compatible with the above uses.
- (c) Permitted accessory uses. The following uses shall be permitted as accessories to permitted principal uses in light industrial districts:
 - (1) Uses permitted and as regulated as accessory uses in restricted industrial districts (1-1).
 - (2) Other uses determined by the city council to be customarily accessory to uses permitted in this district.

Sec. 35.1- 41. Heavy industrial districts (I-3).

(a) Intent. These districts are intended to provide for industrial and other activities which produce the highest levels of nuisance permitted under federal and state air and water pollution regulations. Generally, the objective of this ordinance is to limit nuisances and any other objectionable characteristics to those which are not discernible beyond the boundary of the district. No use shall be allowed in this district unless listed or defined below as a use permitted by right, as a permitted accessory use or as a use permitted by conditional use permit, provided, however, that any such permitted use existing prior to December 13, 1988, may be enlarged or expanded, but not relocated, so long as it meets all other applicable requirements of this chapter. Any such use shall not be subject to any of the limitations or other regulations prescribed for non-conforming uses elsewhere provided in this chapter.

(c) Uses permitted by right. The following uses shall be permitted by right in heavy industrial districts subject to the regulations of Section 35.1-14 of this ordinance:

- (1) Any manufacturing or industrial use which is not specifically prohibited by Section 35.1- 41(b) above, provided, however, that any such prohibited use legally existing at the time of enactment of this chapter shall not be subject to any of the limitations or other regulations prescribed for non- conforming uses elsewhere provided in this ordinance.
- (2) Contractor and construction shops and yards.
- (3) Retail/wholesale display rooms for sales at industrial establishments of products manufactured on site and other products of the corporation provided the display area does not exceed fifteen (15) per cent of the total floor area.
- (4) Truck painting and body repair shops.
- (5) Wholesale display rooms within industrial establishments as regulated by Section 35.1-40(b)(115).
- (d) Permitted accessory uses. Uses not specifically prohibited by Subsection (b) above are permitted as accessory uses in heavy industrial districts.

The Department of Community Planning & Development
City Hall, Lynchburg, VA 24504

434-847-1508

To: Planning Commission
From: Planning Division
Date: February 13, 2002
Re: **REZONING: I-3 to B-5(C) at 1601 WYTHE ROAD**

II. PETITIONER

Urban Alternative, Inc., P.O.Box 28, Lynchburg, VA 24505.
Representative: Petitioner

II. LOCATION

The subject property is a tract of about 0.9 acres located at 1601 Wythe Road.
Property Owner: Urban Alternative, Inc., P.O.Box 28, Lynchburg, Virginia 24505.

III. PURPOSE

The purpose of this petition is to rezone the subject property from I-3, Heavy Industrial District, to B-5 (Conditional), General Business District, in order to allow the operation of a child care facility for approximately 35 children in an existing building.

IV. SUMMARY

- Petition does not agree with the *General Plan*, which recommends a General Industrial use.
 - Petition proposes an inappropriate land use for the subject industrial parcel.
 - Petition is considered to be less compatible with the surrounding area than the existing zoning
 - Petition would remove viable property from industrial use in direct conflict with the City's intent to preserve industrial property wherever possible.
-
- **The Planning Division recommends denial of the rezoning petition.**
-

V. FINDINGS OF FACT

1. **General Plan.** The Lynchburg *General Plan* recommends a General Industrial use for the subject property. The *General Plan* discourages scattering commercial activities throughout the City. Scattering often results in increased inconvenience for customers and increases the dangers of blighting effects on residential areas. Objective 4 recommends "[a] pattern of commercial uses and design of commercial areas which cause a minimum of nuisance to living areas and of interference with traffic on major thoroughfares." The subject petition proposes to rezone the property to a commercial zoning classification in a block with heavy industrial zoning and land use. The proposal will not maintain the current practice of preserving existing industrial areas as established by the *General Plan*.

Zoning. The property has been zoned industrial since 1930. In 1939, the property was used as the Naval Armory and, more recently, as a Federal Courthouse. The existing buildings were constructed in the industrial district under the then prevailing provisions of the Zoning Ordinance. The site proposed for the child care facility in an existing building is presently zoned I-3, Heavy Industrial District, and requires a commercial zoning to allow the proposed child care use "by right."

On July 13, 2001, Art Tolley, Zoning Official, and Judith Wiegand, Strategic Planner, left a telephone message for Ms. Sylvia Hobson in response to her request for information about rezoning this site. Mr. Tolley indicated that we would not be able to support a rezoning of this property because the City wishes to preserve industrially zoned property and, since the surrounding property is zoned heavy industrial, the parcel is not suitable for a child care facility. It was the City's understanding at the time of this telephone call that the petitioner had not yet purchased the property.

There have also been several reports of church services being conducted on the property in violation of the current zoning. Unless and until the property is rezoned, no uses other than industrial (I-3) ones are permitted.

Economic Development. Ed Miller, Director of Economic Development, objects to the proposed rezoning because:

- From an economic development perspective, he does not believe the zoning should be changed to allow the operation of a child care center.
- The day care center would not be compatible with the industrial businesses in the immediate area.
- He does not believe that the industrial property should be downzoned because the City would then lose the opportunity to help businesses expand or relocate to the site.

2. Proffer. The petitioner voluntarily submitted the following proffer with the rezoning application:

- "I hereby proffer to use the property located at 1601 Wythe Road, Lynchburg, Virginia in relative concordance with the site plan proposed on December 15, 2001, which indicates storage in Building B and parking in Building C."

Because the proffer was not submitted 21 days prior to the Planning Commission meeting, the Planning Commission must grant a waiver to consider the proffer prior to taking action on the rezoning petition.

3. Board of Zoning Appeals (BZA). On November 27, the Board of Zoning Appeals considered two variances for the proposed development. The Board approved the variance to allow the use of buildings having a setback of 20 feet from Naval Reserve Street instead of the required 40 feet. The Board denied the requested variance to allow the premises to be used for a child care center and other uses providing four off-street parking spaces instead of the required 62 spaces.
4. Surrounding Area. There have been no recent rezoning petitions or CUP petitions in the vicinity of the subject property.
5. Site Description. The site is approximately 0.9 acres on which are located three industrial structures (one of which was formerly a Federal Courthouse) and four paved parking spaces. The site is abutted on two sides by heavy industrial land use (Banker Steel), across Naval Reserve Street by public use (City Stadium), and across Wythe Road by a mixture of residential and industrial uses.
6. Proposed Use of Property. The purpose of the rezoning is to allow the operation of a child care facility for 35 children in one of the existing buildings. The building proposed for the child care facility is a two story brick structure, with approximately 2,700 square feet on each of the two floors. There are two metal structures at the rear of the brick structure. The center building is proposed to be used for "personal storage" and the rear building as inside parking with ten angled parking spaces.

Mr. Donald W. Banker, the President/CEO of Banker Steel, the adjacent industry, submitted a letter of concern regarding the proposed use of the subject property to Mr. Arthur Tolley for consideration at the public hearing by the Board of Zoning Appeals. The letter is directly applicable to consideration of the zoning petition. A copy of the letter is enclosed with this report.

7. Traffic & Parking. The City Traffic Engineer noted that the existing entrance to the site was sub-standard in width for two-way traffic. The site plan indicates the entrance from Wythe Road to be widened to 30 feet.

The site plan indicates the following parking requirements and provisions for the proposed uses:

	<u>Required Spaces</u>	<u>Provided Spaces</u>
Building #1: Child Care/Office/Computer Lab -	16	
Building #2: Storage	- 2	
Building #3: 10 spaces inside; 8 outside	- 18	18 Total

The Traffic Engineer also noted that on-street parking may need to be partially restricted to allow adequate line-of-sight for safe ingress and egress.

8. Storm Water Management. The Environmental Specialist of the Robert E. Lee Soil & Water Conservation District notes that a storm water management plan will be required only if the disturbed area exceeds 1,000 square feet. The petition does not propose any new disturbed areas.
9. Visual Impact. The current submittal proposes the use of existing industrial structures. Other than the demolition of a small cinder block (garage) structure at the rear of the property, there is no proposed exterior modification of the structures and no concern about the visual impact the proposed use will have on adjacent industrial areas. However, there is serious concern about the visual impact the existing heavy industrial area will have on the proposed child care facility. The existing industries, noise, and traffic in the area make a child care facility a poor choice of land use for the subject property. The Planning Division is concerned that the proposed use calls into question the health, safety, and welfare of children being kept at the facility. The area designated for an outdoor recreation area is located beside the existing metal structures. The intensive land uses in the area make the proposed child care facility inappropriate with regard to providing a safe and effective drop-off/pick-up area for children, as well as the actual operation of such a facility in an industrial area. The proposed rezoning is not compatible with the surrounding land uses or zoning.
10. Technical Review Committee. The Technical Review Committee (TRC) reviewed the preliminary site plan on October 9 and noted the need for revisions, some of which were major in nature and will need to be addressed by the petitioner. The following were comments of significance to the rezoning petition:
 - A. The proposed use as a child care facility is not an appropriate land use for this area. The petitioner is strongly encouraged to investigate alternative sites for such a use involving small children.
 - B. The Planning Division concludes that this petition is an example of "spot zoning" (which is prohibited by State Enabling Legislation) and as such a petition can not be supported.
 - C. The rear metal building has previous fire damage and this particular building shall not be used for any purpose until renovation is completed and approval obtained from the Inspections Division. It is also noted the corner of the existing building is less than two feet from the property line and the exterior wall is not fire rated. This non-complying condition may need to be addressed by construction plans, if any change of use is to occur or the back building could be removed.
 - D. There will be competition for on-street parking on Wythe Road and there may not always be a space available for day care visitors and employees, as well as any community activities, meetings, etc. Therefore, sufficient on-site parking spaces, as prescribed by the City's Planning and Zoning staff should be provided.

VI. PLANNING DIVISION RECOMMENDATION

Waiver of 21-day prior notice:

That the Planning Commission waive the 21-day submittal requirement of Section 35.1-43.1 of the Zoning Ordinance to accept the proffer submitted by Urban Alternative for the property at 1601 Wythe Road.

Action on Rezoning Petition:

Based on the preceding Findings of Fact, the Planning Division recommends to the City Council denial of the petition of Urban Alternative, Inc. to rezone about 0.9 acres at 1601 Wythe Road from an I-3, Heavy Industrial District, to a B-5 (Conditional), General Business District, to allow the operation of a child care facility (and office uses) in an existing building.

This matter is respectfully offered for your consideration.

William K. McDonald, AICP
Acting City Planner

pc: Mr. L. Kimball Payne, III, City Manager

Mr. Walter C. Erwin, City Attorney
Ms. Rachel O. Flynn, Director of Community Planning & Development
Mr. Bruce A. McNabb, Director of Public Works
Mr. John W. Jennings, Fire Marshal
Ms. Judith C. Wiegand, Strategic Planner
Mr. J. Lee Newland, Director of Engineering
Mr. Gerry L. Harter, Traffic Engineer
Mr. Karl Cooler, Building Official
Mr. Robert Drane, Senior Property Maintenance Code Enforcement Officer
Mr. Arthur L. Tolley, Zoning Official
Mr. Robert S. Fowler, Zoning Official
Mr. and Mrs. Ron Stringfield, Petitioners/Representatives

VII. ATTACHMENTS

1. Vicinity Zoning Pattern

(see attached map)

2. Vicinity Proposed Land Use

(see attached map)

3. Site Plan

(see attached site plan)

4. Letter of Concern

(see attached letter)

Minutes from the February 13, 2002 Planning Commission meeting

Petition of Urban Alternatives, Inc. to rezone approximately 0.9 acres at 1601 Wythe Road from I-3, Heavy Industrial District, to B-5 (Conditional), General Business District, to allow the operation of a child care facility for approximately 35 children in an existing building.

Mr. William McDonald said the Planning Division had expressed their concerns about this petition in their report to the Planning Commission. He added that they were in support of the project, but not in the proposed location on Wythe Road. He said there was concern from the General Plan's implication and the loss of industrially zoned land, which is how this property is currently zoned. Mr. McDonald said for those reasons, the Planning Division recommended denial of this petition.

Mr. Ron Stringfield, 101 Warfield Road, Lynchburg, president of Urban Alternative, addressed the Commission. Mr. Stringfield distributed a packet to the Commissioners with additional information about the Urban Alternative program. He explained that Urban Alternative was a federally recognized, non-profit organization with a 501(c)(3) status. He said Urban Alternative proposed to provide temporary assistance to families and individuals with training that would enable them to move into self-sufficiency and off welfare. He added that Urban Alternative was not just a childcare facility, but was a subsidiary to the training programs that they offer. He noted that a community meeting was held to discuss the goals of Urban Alternative, and he had a petition in support of the project.

Mr. Stringfield said the building was built in 1947, but had never been used for industrial purposes. He said the building had previously a naval armory and later a federal courthouse, but had been vacant for the last 17 years. He said he was certain that the neighbors would rather live near Urban Alternative than near any type of business allowed in an industrial zoned area. He added that the businesses in the area would not have to modify their operations as a result of Urban Alternative moving into the proposed site.

Mr. Stringfield said that Ms. Rachel Flynn, Director of Community Planning and Development, and Mr. Art Tolley, Zoning Official, visited the site and suggested that Urban Alternative demolish one of the buildings on site. They also requested that Urban Alternative submit a condition stating that one of the two remaining warehouse type buildings would only be used for storage by the organization. He contended that by demolishing the one building and with the proposed condition, the necessary parking for the facility would be met according to City Code, and the BZA's request. He said the driveway to the site had been widened to 30 feet and the site plan provided a total of 18 parking spaces. He said there would be adequate space for a turn around and also for two-way traffic. He claimed all comments from the TRC had been addressed and noted on the site plan with a revision date of December 4, 2001.

Mr. Stringfield said according to the formula used by the state licensing agent for special services the maximum number of children allowed in their facility would be 20, and the play area was deemed safe for children. He said the Health Department had approved food preparation on site, and the Fire Marshal indicated that the fire codes had been met. However, he added, these licenses could not be issued until the rezoning was approved. Mr. Stringfield said he had high regard for technical professionalism and expertise of licensing agents, but not for varied opinions.

Mr. Stringfield said that Urban Alternative had presented a positive view, but had received negative feed back that was the opinion of others.

Mr. Wayne Brown, Grose Point Lane, Smith Mt. Lake, spoke in favor of the petition. Mr. Brown said he had been a previous owner of the property. He said this building had been proposed for several different uses in the past, but none had been approved. He asked the Commission to give fair consideration to the petition of Urban Alternative.

Mr. Timothy Hurd, 1929 Grace Street, Urban Alternative Technical Program Coordinator, spoke in favor of the petition. He noted that the Economic Development section of the City's web site promoted several industrial

parks within the City but did not include the site on Wythe Road, and questioned the City's desire to keep this site zoned industrial.

Ms. Sylvia Hobson, 1126 Ardmore Drive, Urban Alternative Child Care Program Coordinator, spoke in favor of the petition. Ms. Hobson read two letters of support from Chris Barrett of Lynchburg College and also from Lisa Sykes, Department of Social Services.

Mr. Edward Ewers, James C. May & Associates, spoke in favor of the petition. Mr. Ewers said his company prepared the site plan for the petitioner. He said the petitioner had addressed the comments from the TRC and the BZA and had agreed to address parking, landscaping, the outside land use for the children's' play areas, and additionally, all of their plans exceeded the requirements of the City. He said originally there was limited parking on site and cars would have been forced to back out onto Wythe Road, but Urban Alternative had agreed to remove an existing building in order to meet the parking requirements of the City and eliminate the need for cars to back out onto a busy street. Mr. Ewers noted that there were other areas of B-5 zoning along Wythe Road.

Commissioner Echols asked the following questions:

- How many children will be attending the center?
- How many square feet are there in Building One?
- What would the remainder of the buildings be used for?

Commissioner Dahlgren asked the following questions:

- What are the hours of operation?
- Would there be church services in the building?

Commissioner Worthington asked the following questions:

- How much acreage is included?
- Will the storage building be rented out?
- Would church services continue to be allowed in the building?

Mr. Stringfield responded to the questions by saying:

- Building One has 2,700 square feet per floor.
- Building Two would be used for personal storage for file cabinets, school materials and business materials. He added that the roof would have to be replaced before the building would be usable. He said the building would be utilized by Urban Alternative only and storage space would not be rented to the public.
- The hours of operation would be from 7:00 a.m. to 5:00 p.m.
- He said there was no church affiliation with Urban Alternative and there were currently no church services being held in the building. He said they were allowing certain groups to practice music in the building. He said in the future they would consider having church services in the facility.
- He said it had been determined that the building could only accommodate 20 children at one time. However, he said, the child care services was a subsidiary to the real use of the building, which was a training center for adult students.

Commissioners continued by asking the following questions:

- What kind of training would be offered at the site?
- How many students would be trained at one time?
- How many instructors would be involved?
- What are the ages of students receiving the training?
- Is the child care center only in operation when training is going on and is it only available for children of the students being trained?
- Are you currently conducting training?

Mr. Stringfield responded with the following:

- The training would consist of GED preparation, computer and interview training, basic office applications, and resume writing, with the age of the trainees being 17 and older.
- Seven is the maximum number of trainees at any one time, and training has yet to begin.
- One wing of one floor would be used for child care.
- There may be two or three instructors and/or interns at one time.
- He said most students would not have private transportation and would probably use the public bus system to travel to the facility.
- After the parents complete their training, their children would not be allowed to continue coming to the child care facility.

Chair Dahlgren commented that the summary of the petition in the Planning Commission report stated that Urban Alternative was seeking approval to provide a child care facility for 35 children during normal working hours. However, he continued, Mr. Stringfield's comments at this meeting indicate that the child care was only a small portion of the request and the main function of their business was to provide work-skill training for adults. He said the community should appreciate the mission of Urban Alternative, but obviously there was miscommunication about the real purpose of the petition. He said if the Commission acted on what is in the report today, the petitioner would not be given a fair chance for approval, and they needed to figure out how to give the petitioner the full benefit of the staff's expertise in preparing the report.

Mr. Stringfield stated that Urban Alternative did not think they were getting a fair chance from the City. He said they indicated all of this information to the Planning Division, but the City only focused on the child care portion of the petition. He added that there was a problem with the City's interpretation of their petition. He said it was unfair that the City was representing them when he felt that he should be representing his own company.

Mr. McDonald said the staff's comments and the TRC comments were based on the understanding that the primary function of the facility was for child care, as was submitted by Urban Alternative.

Commissioner Wilkins suggested that this hearing be tabled until the next meeting and the report from the staff be rewritten to reflect Mr. Stringfield's description of Urban Alternative's project as he had described at this meeting.

Commissioner Flint asked if any of Urban Alternative's proposed uses were allowed by right in an industrial zone.

Mr. McDonald answered that none of the proposed uses were allowed by-right. He said the property would have to be rezoned for any type of training, child care, or storage facility, office use, church services, etc.

Commissioner Worthington said if this project was only for a child care facility, he would have to vote for denial of the petition.

Ms. Hobson explained that the City would not allow more than five infants to be kept in any building without a sprinkler system. She continued by saying that the children coming to this program would be older than 2 ½ years old. She also said that if there were more than five children, they would have to obtain a state license to operate. She said they could only get a license if they were a child care center, so they had to emphasize that facet in order to meet the state requirements and be allowed to have a training center.

Commissioner Echols echoed Commissioner Worthington's response and said he also could not support a day care center in an industrial area. He said Mr. Stringfield needed to refine his presentation to have a better chance of having the property rezoned.

Chair Dahlgren told Mr. Stringfield that even if this public hearing was postponed until a later meeting date, that did not guarantee that Urban Alternative's proposal would be recommended for approval by the Planning Commission, or that City Council would grant the rezoning. But, he said, if the public hearing was postponed until a later meeting, at least they would get a fair chance of having their petition presented properly.

Mr. McDonald said there would still be concerns from the Planning Department with the property going out of the industrial zone. He explained that this building had always been nonconforming because it was built by the federal government, and the federal government did not have to follow any City ordinances and they were allowed to build any type of building in any location they chose.

Mr. Stringfield pointed out that the building could not be used for anything else unless it was rezoned. He said there was currently a variety of different zones in that area.

Commissioner Moore said he would like to see what could be done to make Mr. Stringfield's proposal acceptable.

Commissioner Wilkins told Mr. Stringfield that he needed to give all of the facts to the Planning Department so an accurate report could be written to help the Commission and the Council understand the project. She said he needed to include proffers to outline the maximums that he would be willing to do for the project.

Ms. Judy Wiegand, Strategic Planner, told the Commission that she heard about this project in July 2001, and at that time she had not met anyone from Urban Alternative and there had been no site plan submitted. She had indicated opposition to the proposed rezoning and offered to help them find another building. She said that some time later she found out that Urban Alternative had proceeded with purchasing the building, knowing that the Planning Division had serious concerns with their proposed use of the site. She said when the group came in, they mentioned all of the same uses as they mentioned today, but the only use included in the petition was childcare, so that was the goal the Planning Division had worked toward. She said the Planning staff had spent a lot of time working with this petition.

Ms. Wiegand said the material that Mr. Stringfield distributed to the Commissioners at this meeting had never been seen by anyone on the staff, but the staff would like the opportunity to review this material, find out exactly what the petitioner was planning and be able to write a report with the current information that the Commissioners had just been given. She said the purpose of a Strategic Planner was to look into the future and try to make the City better, not worse. She said rezoning this site would only add another zone to the already mixed up area. She said that the stated purpose of Urban Alternative was very important and thought the City needed a group like this.

Chair Dahlgren stressed again that even if the hearing was postponed, there was no guarantee that the Commission would recommend approval to Council.

After further discussion, Commissioner Echols made the following motion, which was seconded by Commissioner Wilkins and passed by the following vote:

That the petition of Urban Alternative be postponed until the March 13, 2002 Planning Commission meeting in order to give the petitioner an opportunity to amend their current proposal.

AYES:	Dahlgren, Echols, Flint, Moore, Wilkins, Worthington	6
NOES:		0
ABSTENTIONS:		0

NOTE: Due to an error with the legal notice in the newspaper, the regularly scheduled March 13 Planning Commission date had to be rescheduled for March 20, 2002.